

Office of the Attorney General
State of North Dakota

Opinion No. 83-42

Date Issued: December 5, 1983

Requested by: Stuart A. Larson
Traill County State's Attorney

--QUESTION PRESENTED--

Whether real property owned by the Small Business Administration is exempt from ad valorem taxation.

--ATTORNEY GENERAL'S OPINION--

It is my opinion that real property owned by the Small Business Administration is exempt from ad valorem taxation.

--ANALYSIS--

Article X, § 5 of the North Dakota Constitution provides, in part:

'The property of the United States . . . shall be exempt from taxation.'

Section 57-02-08(1) of the North Dakota Century Code provides:

57-02-08. PROPERTY EXEMPT FROM TAXATION. All property described in this section to the extent herein limited shall be exempt from taxation:

1. All property owned exclusively by the United States except any such property which the state and its political subdivisions are authorized by the laws of the United States to tax.

Article 6, Clause 2 of the United States Constitution, known as the supremacy doctrine, and the above-quoted provisions exempt from local taxation the property owned by federal agencies and instrumentalities, unless the immunity has been waived by Congress. *Federal Land Bank of St. Paul v. State*, 274 N.W.2d 580 (N.D. 1979). The burden of showing that Congress has waived this immunity is upon the local taxing authority. 274 N.W.2d 580, 583.

The Small Business Administration is an agency of the United States Government.
15 U.S.C.A. § 633.

While Congress has waived the Federal Land Bank's immunity from ad Valorem taxation on real property that it owns (12 U.S.C.A. § 2055, 274 N.W.2d 580, 582), no similar waiver has been passed by Congress with respect to the Small Business Administration.

Therefore, it is my opinion that real property owned by the Small Business Administration is exempt from ad valorem taxation.

--EFFECT--

This opinion is issued pursuant to Section 54-12-01, N.D.C.C. It governs the actions of public officials until such time as the question presented is decided by the courts.

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